DEC 15 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 667- 670

WESLEY W. WEST, *Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

J. MARION WEST, *Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

ESTATE OF J. M. WEST, DECEASED, JAMES M. WEST, JR., ET AL., EXECUTORS, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

JESSIE GERTRUDE WEST, *Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

MOTION FOR LEAVE TO FILE STATEMENT IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI FILED BY PETITIONERS.

GROVER SELLERS,
Attorney General of the State of Texas;

WM. J. FANNING,
Asst. Atty. General of the State of Texas;

ROBERT W. KENNY,
Attorney General of the State of California.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Now come Grover Sellers, Attorney General of the State of Texas, William J. Fanning, Assistant Attorney General of the State of Texas, and Robert W. Kenny, Attorney Gen-

eral of the State of California, and respectfully move for leave to file, as amici curiae, the following statement in support of the petitions for writs of certiorari in the above styled cases.

STATEMENT.

We are prompted to urge that this Court accept these cases for review by reason of the fact that the question involved is one of wide interest to the people of the States of Texas, California and other oil producing states. It is a common practice in both Texas and California, as well as in other oil producing states, for landowners when selling their land to reserve to themselves varying rights in the minerals, such as a royalty interest in oil and gas.[1] Heretofore, so far as we have been able to ascertain, such transactions have been treated by the federal taxing agencies as falling within the capital gains provision of the income tax law.

However, as a result of the decision in the present cases, owners of potential mineral producing land do not know whether the proceeds of sales made by them, with an interest retained, will be treated as ordinary income or capital gain. This doubt[2] has had the effect of deterring many persons from selling their lands. Until the uncertainty may be resolved, sales of land in oil producing states will be retarded. It is a matter of public policy that there should be no restriction upon the disposition of property. Once landowners know their rights, they may be governed accordingly; but until the rights are known, there will be the restriction mentioned.

The decision of the Circuit Court of Appeals in these cases is out of harmony with the pronouncements of our

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1 Because either the presence of or amount of underlying oil or gas is unknown, few owners of land desire to part with all their mineral rights.

2 The uncertainties caused by the decision have been further increased by the interpretation placed upon it by the taxing authorities. We have been informed that in reliance upon these cases deficiencies are being proposed in instances in which sales have been made with a royalty retained and in connection with which no provision for the development of minerals has been made.

local courts which regard transactions of this type as sales, not leases. It is well recognized that while the taxation of rights and interests is governed by the federal law, these rights and interests are those created by local law.[3] Accordingly, the decision of the Circuit Court of Appeals, characterizing this transaction as a lease of the mineral estate, necessarily introduces confusion into prevailing local concepts of these rights and duties.

WHEREFORE, it is respectfully suggested that the petitions for writs of certiorari should be granted.

Copies of this statement have been made available to counsel for the Commissioner.

GROVER SELLERS,
Attorney General of the State of Texas;

WM. J. FANNING,
Asst. Atty. General of the State of Texas;

ROBERT W. KENNY,
Attorney General of the State of California.

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3 *Morgan* v. *Commissioner*, 309 U. S. 78 (1940), opinion amended and rehearing denied, 309 U. S. 626 (1940).